STATE OF MICHIGAN

COURT OF APPEALS

JANICE J. HOLBROOK,

Plaintiff-Appellee,

v

CITY OF GRAND LEDGE,

Defendant-Appellant.

UNPUBLISHED
June 19, 1998

No. 199085
Eaton Circuit Court
LC No. 95-000258 NO

Before: MacKenzie, P.J., and Holbrook, Jr., and Saad, JJ.

PER CURIAM.

Defendant appeals by right from a $321,931.79 judgment in plaintiff's favor following a jury trial in this negligence action. Prior to an adjudication of plaintiff's claims, defendant filed a motion for summary disposition, asserting that it was immune from liability under MCL 691.1407; MSA 3.996(107). On appeal, defendant challenges the denial of that motion. We reverse and remand.

Plaintiff was injured when she tripped as she walked across a bridge that connects Grand Ledge proper with Second Island, a small island located in the middle of the Grand River. The bridge consists of a metal structure supporting a wooden surface. Plaintiff was injured when she tripped over a metal lag bolt that was protruding from the wooden surface. Defendant argues that the trial court erred when it ruled that this bridge came within the narrowly tailored[1] defective highway exception to the Governmental Tort Liability Act (hereinafter the "Act"), MCL 691.1401 *et seq.*; MSA 3.996(101) *et seq*. In pertinent part, the defective highway exception provides:

> Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person sustaining bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for travel, may recover the damages suffered by him or her from the governmental agency. . . . The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and

does not include

> sidewalks, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. [MCL 691.1402(1); MSA 3.996(102)(1).]

The phrase "governmental agency" is defined by the Legislature as including "municipal corporations," which in turn is defined as including a "city." MCL 691.1401(a), (d); MSA 3.996(101)(a), (d). The term "highway" is defined as "mean[ing] every public highway, road, and street which is open for public travel and shall include bridges, sidewalks, crosswalks, and culverts on any highway. The term highway does not include alleys, trees, and utility poles." MCL 691.1401(e); MSA 3.996(101)(e).

Defendant's motion for summary disposition was brought under both MCR 2.116(C)(7) and (8). The trial court did not specify which subsection of the court rule it relied upon when denying defendant's motion for summary disposition. Defendant argued before the trial court that because the bridge did not fall within the ambit of the defective highway exception to the Act, plaintiff's claim was barred by governmental immunity. Given that "[g]overnmental immunity is not an affirmative defense but a characteristic of government that prevents imposition of tort liability," *Markis v Grosse Pointe Park*, 180 Mich App 545, 551; 448 NW2d 352 (1989), we review the trial court's ruling under the standard applicable to MCR 2.116(C)(8). We review motions for summary disposition de novo in order to determine "whether the moving party was entitled to judgment as a matter of law. MCR 2.116(C)(8) permits summary disposition when the opposing party has failed to state a claim upon which relief can be granted. . . . The court must accept as true all well-pleaded facts." *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994) (citation omitted).

The crux of defendant's argument on appeal is that the structure on which plaintiff was injured does not fall within the category of "bridges . . . on any highway," as set forth in MCL 691.1401(e); MSA 3.996(101)(e). The undisputed facts established that the bridge is approximately 150 feet long, a little over eleven feet wide, and has a metal railing approximately three and one-half feet high running along both sides of the bridge. One end of the bridge is attached to Second Island and the other end is attached to a parking lot on the mainland. At the time of the accident, a sign indicating a six-ton weight restriction was posted just before the bridge on the mainland side. While the bridge primarily serves as a pedestrian walkway between the mainland and the island, at the time of the accident vehicular travel over the bridge was permitted. For example, vendors and exhibitors are allowed to drive across the bridge when setting up and removing displays for various festivals and events that take place on the island. Noting that in its opinion the facts of this case presented a "difficult and close question," the trial court held as follows:

> What I'm going to rule is that it does . . . not fall under governmental immunity. And I do this with certain trepidation because I recognize that a very strict reading of the statute would maybe suggest—well, it does suggest—that is not a correct interpretation. On the other hand, the logic of it would, in this Court's opinion, require that the City maintain a bridge that is the only means to go to another portion of the city, the only means for vehicles when it's open to vehicles and the only means for pedestrians. And to suggest that they would have to maintain that bridge if it were out on one of the streets or roadways, but would not have to maintain it because it's not directly connected to a roadway, does not appear to this Court to be particularly

> logical, nor does it seem to meet the concerns that the Legislature had in making the exception to governmental immunity, that is, for the municipality to maintain areas that are open for public . . . use for purposes of providing access to certain areas of the city. And that's what this bridge does.

We disagree with the trial court's analysis and the resolution it reached. At the beginning of its analysis, the trial court correctly observed that a "strict reading" of the defective highway exception indicates that governmental immunity applies under the circumstances. However, the trial court erred when it ignored the plain statutory language. As a result, in order to make the exception conform to its notion of what the logically consistent outcome should be, the trial court improperly broadened the scope of the exception. Such an action is beyond the constitutional authority of the court. *Chaney v Dep't of Transportation*, 447 Mich 145, 170; 523 NW2d 762 (1994) (observing that "[t]he judiciary may not amend statutes to conform with its policy preferences") (Riley, J., *concurring in part and dissenting in part*).

Resolution of this appeal turns on the proper interpretation of the defective highway exception. "Statutory interpretation is a question of law reviewed de novo on appeal." *People v Williams*, 226 Mich App 568, 570; 576 NW2d 390 (1997). The overriding goal guiding judicial interpretation of statutes is to discover and give effect to legislative intent. *Chaney, supra* at 154. The starting place for the search for intent is the language used in the statute at issue. *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993); *Williams, supra* at 570. "Unless defined in the statute, every word or phrase should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *People v Hack*, 219 Mich App 299, 305; 556 NW2d 187 (1996). Accord *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 638; 552 NW2d 671 (1996).

As the statute plainly states, application of the exception to a given bridge is dependent upon the linking of that bridge to a "public highway, road, and street which is open for public travel." If the bridge spans a barrier in the path of a highway (e.g., another highway or a naturally occurring obstruction), and thereby facilitates continuing public travel over the highway, that bridge is linked to the highway for purposes of the defective highway exception. In other words, a bridge that is a part of an existing highway is considered to be an integral part of that highway. The bridge in the case at bar does not serve a similar purpose. It begins at a parking lot on the mainland and terminates on the island. Vehicular traffic does not pass over the bridge as it moves from one section of a thoroughfare to another. Accordingly, the bridge does not fall within that category of bridges established by MCL 691.1401(e); MSA 3.996(101)(e).

Additionally, while it is true that at the time of the accident vehicular travel between the mainland and the island was only possible via the bridge, we believe that this fact is not dispositive. For example, the definition of highway found in MCL 691.1401(e); MSA 3.996(101)(e) specifically excludes alleys, even though they often provide the main delivery access to buildings abutting such passageways. Similarly, as this Court observed in *Richardson v Warren Consolidated School Dist*, 197 Mich App 697, 704-705; 496 NW2d 380 (1992), a school driveway is "not a 'street which is opened for public travel,' even though it has some streetlike qualities." As these authorities implicitly recognize, the category "travel" is very broad. While it means in the universal sense moving "from one place to

another," *The American Heritage Dictionary of the English Language* (1996), p 1904, the type of travel[2] and the specific distance covered can vary widely. In the context in which the term is used in the Act, however, it seems clear to us that it means something more than occasional vehicular traffic moving back and forth between a parking lot and a small island.

Accordingly, we reverse and remand the case to the trial court with instructions that the court grant defendant's motion for summary disposition under MCR 2.116(C)(8) on the grounds that the lawsuit is barred by governmental immunity.

Reversed and remanded. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad

[1] See *Taylor v Lenawee County Bd of County Road Comm'rs*, 216 Mich App 435, 438; 549 NW2d 80 (1996) (characterizing the defective highway exception as "narrowly drawn").

[2] When read together, MCL 691.1401(e); MSA 3.996(101)(e) and MCL 691.1402(1); MSA 3.996(102)(1) draw a distinction between pedestrian and vehicular travel. This distinction, however, is not dispositive in the case at hand.